

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:96-CR-62-BO-4

UNITED STATES OF AMERICA

v.

JOSE PENA-ROSARIO

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ORDER

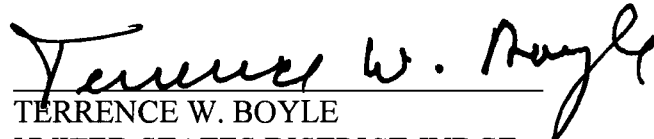
This matter is before the Court on Defendant's "Motion for a full confirmation to the BOP" [DE 334] and "Motion to Request Clarification" [DE 396]. The United States filed a Motion to Dismiss for Lack of Jurisdiction [DE 397], Mr. Pena-Rosario responded [DE 401] and the Motions are ripe for adjudication.

Mr. Pena-Rosario is currently incarcerated at FCI-Fort Dix in Fort Dix, New Jersey. His Motions [DE 334 and DE 396] each seek to gain credit for time served in custody prior to the imposition of his most recent federal sentence. The appropriate jurisdictional basis to challenge prior custody credit is through a petition through writ of habeas corpus under 28 U.S.C. § 2241. *United States v. Miller*, 871 F.2d 488, 489-90 (4th Cir. 1989). Such a petition may only be maintained in the district where there is in personam jurisdiction over the petitioner's immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). Here, Mr. Pena-Rosario's immediate custodian is the warden of FCI-Fort Dix in the District of New Jersey. Accordingly, these Motions are dismissed for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

For the foregoing reasons, Mr. Pena-Rosario's "Motion for a full confirmation to the

BOP” [DE 334] and “Motion to Request Clarification” [DE 396] are DENIED. The United States’ Motion to Dismiss for Lack of Jurisdiction [DE 397] is GRANTED.

SO ORDERED, this the 17 day of January, 2012.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE